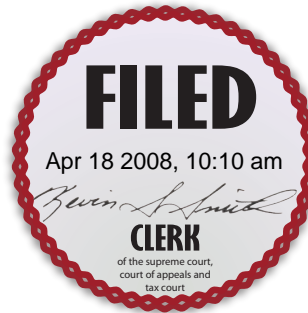


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JEREMY K. NIX
Matheny, Michael, Hahn & Denman, L.L.P.
Huntington, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN R. PERKINS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 35A04-0712-CR-752

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-0510-FB-249

April 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Kevin R. Perkins appeals the trial court's modified order revoking his probation contending the trial court did not have jurisdiction to modify its earlier order releasing him from probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

In February 2006, pursuant to a plea agreement, Perkins pled guilty to Dealing in a Schedule II Controlled Substance and Aiding in Dealing in a Schedule II Controlled Substance, both as Class B felonies. In accordance with the agreement, Perkins was sentenced to a term of ten years, with two years executed and eight years suspended to probation. The conditions of Perkins' probation included the conditions that Perkins "shall not consume, inhale, possess, or inject controlled substances" unless prescribed by his physician and pay probation supervision fees.

After Perkins served the executed portion of his sentence and commenced probation, the Probation Department filed a petition to revoke Perkins' probation alleging that he had tested positive for marijuana and failed to pay probation supervision fees. On November 13, 2007, at the hearing on the petition, Perkins admitted to the violations. The trial court ordered Perkins to serve an additional one and one-half years (1½) executed and released him from probation unsatisfactorily. On November 16, 2007, the trial court on its own motion ordered that Perkins reappear. The court then stated that its order of November 13, 2007 was erroneous and modified the order to provide that Perkins shall serve an additional one and one-half years as previously ordered and shall then serve the balance of his sentence on probation. Perkins now appeals.

DISCUSSION AND DECISION

Perkins contends that the trial court's order of November 13, 2007 was a final judgment, and that, once such judgment was entered, the trial court was without jurisdiction to modify it. We disagree.

Under Indiana Trial Rule 59, a trial court may, on its own motion, correct an error within thirty days after entry of a final judgment. We have specifically held that a trial court has jurisdiction to correct any sentencing error within thirty days of its sentencing order. *See Hoggatt v. State*, 805 N.E.2d 1281, 1284 (Ind. Ct. App. 2004), *trans. denied*. Here, the trial court stated that it erred in entering the order of November 13, 2007 because its intent at all times was that Perkins would serve the balance of his eight-year sentence on probation. It acted on its own motion within three days of its prior order. In doing so, it complied with Trial Rule 59 and was within its jurisdiction.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.